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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 DARON STAMPS,) NO. CV 16-1042-E
12)
13 Plaintiff,)
14)
15 v.) MEMORANDUM OPINION
16)
17 NANCY A. BERRYHILL, Acting)
18 Commissioner of Social Security,)
19)
20 Defendant.)
21 _____)

22 PROCEEDINGS
23

24 Plaintiff filed a complaint on February 16, 2016, seeking review
25 of the Commissioner's denial of benefits. The parties consented to
26 proceed before a United States Magistrate Judge on March 25, 2016.
27 Plaintiff filed a motion for summary judgment on December 30, 2016.
28 Defendant filed a motion for summary judgment on January 30, 2017.
The Court has taken the motions under submission without oral
argument. See L.R. 7-15; "Order," filed February 17, 2016.

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BACKGROUND

Plaintiff asserted disability since December 21, 2011, based primarily on alleged pain (Administrative Record ("A.R.") 46, 51-52, 117-25, 146). An Administrative Law Judge ("ALJ") reviewed the medical record and heard testimony from Plaintiff, a medical expert and a vocational expert (A.R. 29-280). The ALJ found Plaintiff has severe "osteoarthritis of the left knee," "gunshot wound in the left forearm," and "tendonitis of the left wrist" (A.R. 34). The ALJ also found, however, that Plaintiff retains the residual functional capacity to perform his past relevant work, as well as other jobs existing in significant numbers in the national economy (A.R. 34-39). The ALJ deemed Plaintiff's contrary testimony not credible (A.R. 35-37). The Appeals Council considered additional evidence, but denied review (A.R. 1-5, 281-95). Plaintiff contends that the ALJ failed to state sufficient reasons for discounting Plaintiff's credibility.

STANDARD OF REVIEW

Under 42 U.S.C. section 405(g), this Court reviews the Administration's decision to determine if: (1) the Administration's findings are supported by substantial evidence; and (2) the Administration used proper legal standards. See Carmickle v. Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner of Social Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v.

1 Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted);
2 see also Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

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4 Where, as here, the Appeals Council considered additional
5 evidence but denied review, the additional evidence becomes part of
6 the record for purposes of the Court's analysis. See Brewes v.
7 Commissioner, 682 F.3d at 1163 ("[W]hen the Appeals Council considers
8 new evidence in deciding whether to review a decision of the ALJ, that
9 evidence becomes part of the administrative record, which the district
10 court must consider when reviewing the Commissioner's final decision
11 for substantial evidence."; expressly adopting Ramirez v. Shalala, 8
12 F.3d 1449, 1452 (9th Cir. 1993)); Taylor v. Commissioner, 659 F.3d
13 1228, 1231 (2011) (courts may consider evidence presented for the
14 first time to the Appeals Council "to determine whether, in light of
15 the record as a whole, the ALJ's decision was supported by substantial
16 evidence and was free of legal error"); Penny v. Sullivan, 2 F.3d 953,
17 957 n.7 (9th Cir. 1993) ("the Appeals Council considered this
18 information and it became part of the record we are required to review
19 as a whole"); see generally 20 C.F.R. §§ 404.970(b), 416.1470(b).

20 21 DISCUSSION

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23 After consideration of the record as a whole, Defendant's motion
24 is granted and Plaintiff's motion is denied. The Administration's
25 findings are supported by substantial evidence and are free from

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1 material¹ legal error. Plaintiff's contrary arguments are unavailing.

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3 An ALJ's assessment of a claimant's credibility is entitled to
4 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
5 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as
6 here, the ALJ finds that the claimant's medically determinable
7 impairments reasonably could be expected to cause some degree of the
8 alleged symptoms of which the claimant subjectively complains, any
9 discounting of the claimant's complaints must be supported by
10 specific, cogent findings. See Berry v. Astrue, 622 F.3d 1228, 1234
11 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995);
12 but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996)
13 (indicating that ALJ must offer "specific, clear and convincing"
14 reasons to reject a claimant's testimony where there is no evidence of
15 malingering).² An ALJ's credibility findings "must be sufficiently
16 specific to allow a reviewing court to conclude the ALJ rejected the
17 claimant's testimony on permissible grounds and did not arbitrarily
18 discredit the claimant's testimony." See Moisa v. Barnhart, 367 F.3d

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20 ¹ The harmless error rule applies to the review of
21 administrative decisions regarding disability. See Garcia v.
22 Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

23 ² In the absence of an ALJ's reliance on evidence of
24 "malingering," most recent Ninth Circuit cases have applied the
25 "clear and convincing" standard. See, e.g., Burrell v. Colvin,
26 775 F.3d 1133, 1136-37 (9th Cir. 2014); Chaudhry v. Astrue, 688
27 F.3d 661, 670, 672 n.10 (9th Cir. 2012); Molina v. Astrue, 674
28 F.3d 1104, 1112 (9th Cir. 2012); see also Ballard v. Apfel, 2000
WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting
earlier cases). In the present case, the ALJ's findings are
sufficient under either standard, so the distinction between the
two standards (if any) is academic.

1 882, 885 (9th Cir. 2004) (internal citations and quotations omitted);
2 see also Social Security Ruling 96-7p. As discussed below, the ALJ
3 stated sufficient reasons for deeming Plaintiff's subjective
4 complaints less than fully credible.

5
6 The ALJ accurately stated: "There is only minimal evidence of any
7 actual medical treatment in this case" (A.R. 36). An unexplained
8 failure to seek medical treatment frequently, or evidence of minimal
9 medical treatment, may discredit a claimant's allegations of disabling
10 symptoms. See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005);
11 Batson v. Commissioner, 359 F.3d 1190, 1196 (9th Cir. 2004); Johnson
12 v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995); accord Bunnell v.
13 Sullivan, 947 F.2d 341, 346 (9th Cir. 1991); Fair v. Bowen, 885 F.2d
14 597, 603-604 (9th Cir. 1989).

15
16 The ALJ also observed that Plaintiff was not then taking any
17 prescription medication for his allegedly disabling pain (A.R. 36).
18 During the period of claimed disability, Plaintiff reported he took
19 only "Ibuprofen/Motrin 500 mg. about three times a week" (A.R. 148;
20 see A.R. 46; see also A.R. 169 ("He is self treating with home
21 physical therapy and Motrin")).³ A routine and conservative course of
22 treatment, including the taking of only over-the-counter medication,
23 may properly discredit a claimant's allegations of disabling pain.
24 See, e.g., Parra v. Astrue, 481 F.3d 742, 750-51 (9th Cir. 2007),
25 cert. denied, 552 U.S. 1141 (2008) (treatment with over-the-counter

26
27 ³ According to records of medical treatment in August and
28 September of 2014 (after the ALJ's adverse decision), Plaintiff
was taking Naproxen at that time (A.R. 282-88).

1 pain medication is "conservative treatment" sufficient to discredit a
2 claimant's testimony regarding allegedly disabling pain); Johnson v.
3 Shalala, 60 F.3d at 1434 (conservative treatment can suggest a lower
4 level of both pain and functional limitation, justifying adverse
5 credibility determination); see also Tommasetti v. Astrue, 533 F.3d
6 1035, 1040 (9th Cir. 2008) (characterizing physical therapy as
7 conservative treatment).

8
9 The ALJ also correctly stated that Plaintiff was "looking for
10 work" during the period of alleged disability (A.R. 36; see A.R. 50).
11 A disability claimant's search for employment during the period of
12 alleged disability can undermine the claimant's credibility. See
13 Copeland v. Bowen, 861 F.2d 536, 542 (9th Cir. 1988) (upholding ALJ's
14 rejection of claimant's credibility where claimant had accepted
15 unemployment insurance benefits "apparently considering himself
16 capable of work and holding himself out as available for work"); Bray
17 v. Commissioner of Social Security Admin., 554 F.3d 1219, 1227 (9th
18 Cir. 2009) (fact that a claimant has sought out employment weighs
19 against a finding of disability); see also Ghanim v. Colvin, 763 F.3d
20 1154, 1165 (9th Cir. 2014) ("continued receipt" of unemployment
21 benefits can cast doubt on a claim of disability); but see Webb v.
22 Barnhart, 433 F.3d 683, 688 (9th Cir. 2005) ("That Webb sought
23 employment suggests no more than that he was doing his utmost, in
24 spite of his health, to support himself").

25
26 Additionally, the ALJ emphasized that the objective medical
27 evidence undermined any assertion that Plaintiff suffers from
28 disabling symptomatology (A.R. 36-37). Although a claimant's

1 credibility "cannot be rejected on the sole ground that it is not
2 fully corroborated by objective medical evidence, the medical evidence
3 is still a relevant factor. . . ." Rollins v. Massanari, 261 F.3d
4 853, 857 (9th Cir. 2001). Here, the medical evidence suggests
5 Plaintiff's problems have not been, and are not now, as profound as he
6 has claimed. After reviewing the medical record, the medical expert
7 testified Plaintiff retains the residual functional capacity the ALJ
8 found to exist (A.R. 52-54). A consultative examining physician
9 observed Plaintiff had a normal gait, could stand on his heels and
10 toes, sat comfortably and had no difficulty getting on and off the
11 examination table (A.R. 171). This examining physician opined
12 Plaintiff retains the capacity to work (A.R. 173-74). Subsequent to
13 the ALJ's decision, imaging of Plaintiff's left knee yielded normal
14 results (A.R. 294). No physician of record opined Plaintiff was ever
15 permanently disabled from all employment. See Matthews v. Shalala, 10
16 F.3d 678, 680 (9th Cir. 1993) (in upholding the Administration's
17 decision, the Court emphasized: "None of the doctors who examined
18 [claimant] expressed the opinion that he was totally disabled");
19 accord Curry v. Sullivan, 925 F.2d 1127, 1130 n.1 (9th Cir. 1990).

20
21 To the extent one or more of the ALJ's stated reasons for
22 discounting Plaintiff's credibility may have been invalid, the Court
23 nevertheless would uphold the ALJ's credibility determination under
24 the circumstances presented. See Carmickle v. Commissioner, 533 F.3d
25 at 1162-63 (despite the invalidity of one or more of an ALJ's stated
26 reasons, a court properly may uphold the ALJ's credibility
27 determination where sufficient valid reasons have been stated). In
28 the present case, the ALJ stated sufficient valid reasons to allow

1 this Court to conclude that the ALJ discounted Plaintiff's credibility
 2 on permissible grounds. See Moisa v. Barnhart, 367 F.3d at 885. The
 3 Court therefore defers to the ALJ's credibility determination. See
 4 Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will
 5 defer to Administration's credibility determination when the proper
 6 process is used and proper reasons for the decision are provided);
 7 accord Flaten v. Secretary of Health & Human Services, 44 F.3d 1453,
 8 1464 (9th Cir. 1995).⁴

10 CONCLUSION

12 For all of the foregoing reasons,⁵ Plaintiff's motion for summary
 13 judgment is denied and Defendant's motion for summary judgment is
 14 granted.

16 LET JUDGMENT BE ENTERED ACCORDINGLY.

18 DATED: February 8, 2017.

19 /s/

20 CHARLES F. EICK
 21 UNITED STATES MAGISTRATE JUDGE

22 ⁴ The Court does not determine herein whether Plaintiff's
 23 subjective complaints are credible. It is for the
 24 Administration, and not this Court, to evaluate the credibility
 of witnesses. See Magallanes v. Bowen, 881 F.2d 747, 750, 755-56
 (9th Cir. 1989).

25 ⁵ The Court has considered and rejected each of
 26 Plaintiff's arguments. Neither Plaintiff's arguments nor the
 27 circumstances of this case show any "substantial likelihood of
 28 prejudice" resulting from any error allegedly committed by the
 Administration. See generally McLeod v. Astrue, 640 F.3d at 887-
 88 (discussing the standards applicable to evaluating prejudice).